

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
FAYETTEVILLE DIVISION

JAMES PENNINGTON

PLAINTIFF

v.

Civil No. 07-5133

DEPUTY MONROE T. LEE;  
SGT. FAULKENBERRY; and  
DEPUTY LEE

DEFENDANTS

**REPORT AND RECOMMENDATION OF THE MAGISTRATE JUDGE**

Plaintiff, James Pennington, filed this civil rights action pursuant to the provisions of 42 U.S.C. § 1983 on July 31, 2007. He proceeds *pro se* and *in forma pauperis*.

When he filed the lawsuit, Pennington was incarcerated at the Benton County Detention Center (BCDC). On August 14, 2007, Pennington filed a motion to amend or correct the complaint (Doc. 5). In his motion, Pennington asked to be allowed to correct two of the defendants' names. The court by letter dated September 7, 2007, sought clarification from Pennington whether he intended to name only two individuals as defendants, Deputy Monroe T. Lee and Sgt. Faulkenberry, or whether he meant to name Deputy Monroe, Deputy T. Lee, and Sgt. Faulkenberry as defendants.

The court's letter mailed to Pennington at the BCDC was returned as undeliverable with a notation he was no longer incarcerated there. Pennington had not informed the court of a change in his address.

The court learned Pennington had been released on August 20, 2007. The court was able to obtain the address Pennington provided detention center officials when he was booked in. A change of address was entered on his behalf (Doc. 6). All mail that had been returned as undeliverable was resent. Pennington still did not respond to the court's letter inquiry.

On November 26, 2007, a show cause order was entered (Doc. 7). Pennington was given until December 10, 2007, to show cause why this action should not be dismissed based upon his failure to prosecute this action. Pennington has not responded to the show cause order. The order has not been returned as undeliverable. Pennington has not communicated with the court in anyway.

I therefore recommend that this action be dismissed with prejudice based on his failure to prosecute and his failure to obey the order of the court. Fed. R. Civ. P. 41(b).

**Pennington has ten days from receipt of the report and recommendation in which to file written objections pursuant to 28 U.S.C. § 636(b)(1). The failure to file timely objections may result in waiver of the right to appeal questions of fact. Pennington is reminded that objections must be both timely and specific to trigger de novo review by the district court.**

DATED this 14th day of December 2007.

/s/ J. Marschewski

HON. JAMES R. MARSCHEWSKI  
UNITED STATES MAGISTRATE JUDGE